



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0362; FRL-9502-01-R4]

Air Plan Approval; Kentucky; 2015 8-hour Ozone Nonattainment New Source Review

Permit Program Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, on October 15, 2020. EPA is proposing to approve Kentucky's certification that existing Nonattainment New Source Review (NNSR) permitting regulations meet the nonattainment planning requirements for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) for Bullitt and Oldham Counties in the Louisville, KY-IN 2015 8-hour ozone Marginal nonattainment area and portions of Boone, Kenton, and Campbell Counties in the Cincinnati, OH-KY Marginal nonattainment area. This action is being proposed pursuant to the Clean Air Act (CAA or Act) and its implementing regulations.

DATES: Comments must be received on or before **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2021-0362 at www.regulations.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is

restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit www2.epa.gov/dockets/commenting-epa-dockets.

FOR FURTHER INFORMATION CONTACT: Pearlene Williams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, GA 30303-8960. The telephone number is (404) 562-9144. Ms. Williams can also be reached via electronic mail at williams.pearlene@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The New Source Review (NSR) program is a preconstruction permitting program that requires certain stationary sources of air pollution to obtain permits prior to beginning construction. The NSR permitting program applies to new construction and modification of existing sources. New construction and modifications that emit “regulated NSR pollutants” over certain thresholds are subject to major NSR requirements, while smaller emitting sources and modifications may be subject to minor NSR requirements.

Major NSR permits for sources that are in attainment or unclassifiable areas are referred to as Prevention of Significant Deterioration (PSD) permits. Major NSR permits for sources in nonattainment areas and that emit pollutants above the specified thresholds for which the area is in nonattainment are referred to as NNSR permits.

A new stationary source is subject to major NSR requirements if its potential to emit a regulated NSR pollutant exceeds certain emission thresholds. If it exceeds the applicable

threshold, the NSR regulations define it as a “major stationary source.” An existing major stationary source triggers major NSR permitting requirements when it undergoes a “major modification,” which occurs when a source undertakes a physical change or change in method of operation (i.e., a “project”) that would result in: (1) a significant emissions increase from the project, and (2) a significant net emissions increase from the source. *See, e.g.*, 40 CFR 51.165(a)(1)(v)(A) and 40 CFR 51.165(a)(1)(xxxix).

On October 1, 2015, EPA promulgated a revised 8-hour ozone NAAQS of 0.070 parts per million (ppm). *See* 80 FR 65292 (October 26, 2015). Upon promulgation of a new or revised ozone NAAQS, section 107(d) of the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS (or that contributes to ambient air quality in a nearby area that is violating the NAAQS). As part of the designations process for the 2015 8-hour ozone NAAQS, EPA designated two areas in Kentucky as Marginal ozone nonattainment areas, effective August 3, 2018.¹ *See* 83 FR 25776 (June 4, 2018). Areas that were designated as “Marginal” ozone nonattainment areas were required to attain the 2015 8-hour ozone NAAQS no later than three years after the effective date of designation. *See* 40 CFR 51.1303.

On December 6, 2018, EPA issued a final rule entitled “Implementation of the 2015 National Ambient Air Quality Standards for ozone: State Implementation Plan Requirements” (SIP Requirements Rule), which establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS. *See* 83 FR 62998; 40 CFR part 51, subpart CC. Based on the nonattainment designation for the 2015 8-hour ozone NAAQS, Kentucky was required to develop a SIP revision addressing the requirements of CAA sections 172(c)(5) and 173 for Kentucky’s 2015 8-hour ozone Marginal nonattainment areas. *See* 42 U.S.C. 7502(c).

¹ The Kentucky 2015 8-hour ozone NAAQS nonattainment areas are the Kentucky portions of the Cincinnati, OH-KY, and Louisville, KY-IN areas. The Kentucky portion of the Cincinnati, OH-KY nonattainment area consists of portions of Boone, Kenton, and Campbell Counties. The Kentucky portion of the Louisville, KY-IN ozone nonattainment area consists of Jefferson, Bullitt, and Oldham Counties. The NNSR requirement for Jefferson County, Kentucky, will be addressed in a separate action.

Section 172(c)(5) of the CAA requires each state with a nonattainment area to submit a SIP revision requiring NNSR permits in the nonattainment area in accordance with the permitting requirements of CAA section 173.² The minimum SIP requirements for NNSR permitting for the 2015 8-hour ozone NAAQS are located in 40 CFR 51.165. *See* 40 CFR 51.1314.

On October 15, 2020, Kentucky submitted a SIP revision addressing, among other things,³ permit program requirements (i.e., NNSR) for the 2015 8-hour ozone NAAQS for Kentucky's 2015 8-hour ozone Marginal nonattainment areas. EPA's analysis of how this SIP revision addresses the NNSR requirements for the 2015 8-hour ozone NAAQS is provided below.

II. Analysis of the Commonwealth's Submittal

Kentucky's longstanding, SIP-approved NNSR regulation at 401 Kentucky Administrative Regulation (KAR) 51:052, *Review of new sources in or impacting upon nonattainment areas*, establishes air quality permitting requirements for the construction or modification of major stationary sources located within, or impacting, areas designated as nonattainment.⁴ In its October 15, 2020, SIP revision, Kentucky certifies that the version of 401 KAR 51:052 in the SIP satisfies the federal NNSR requirements for the Kentucky 2015 8-hour ozone Marginal nonattainment areas. EPA approved Kentucky's NNSR certification for the 2008 8-hour ozone NAAQS into the Kentucky SIP on April 10, 2017. *See* 82 FR 17131.⁵ The SIP-approved version of 401 KAR 51:052 has not been updated since that 2017 rulemaking.

² CAA section 173 requires, among other things, emissions offsets. The emissions offset ratio for Marginal ozone nonattainment areas is found in CAA section 182(a)(4).

³ The other elements of Kentucky's submittal are being addressed in separate rulemakings.

⁴ This SIP-approved rule also requires offsets for nitrogen oxides and volatile organic compounds of at least 1.1:1 in Marginal nonattainment areas. *See* 401 KAR 51:052, Section 4, Paragraph 3(b).

⁵ While this proposed rulemaking pertains to Bullitt and Oldham Counties and portions of Boone, Campbell and Kenton Counties, 401 KAR 51:052 applies to any areas in the Commonwealth designated as nonattainment.

The current SIP-approved version of 401 KAR 51:052 covers Kentucky's 2015 8-hour ozone Marginal nonattainment areas (i.e., the counties and partial counties to which this proposed action pertains) and remains adequate to meet all applicable NNSR requirements for the 2015 8-hour ozone NAAQS. EPA is therefore proposing to approve Kentucky's certification that 401 KAR 51:052 meets the NNSR requirements for implementation of the 2015 8-hour ozone NAAQS.

III. Proposed Action

EPA is proposing to approve Kentucky's SIP revision addressing the NNSR requirements for the 2015 8-hour ozone NAAQS for Kentucky's 2015 8-hour ozone Marginal nonattainment areas, submitted on October 15, 2020. EPA has preliminarily determined that Kentucky's submission fulfills the 40 CFR 51.1314 requirement and meets the requirements of CAA section 172(c)(5) and 173 and the minimum SIP requirements of 40 CFR 51.165.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen Oxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: February 3, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

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